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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.1303/2002

APPELLANT Rajkumar son of Fattelal, aged about 29 years, resident of Village Salkhan, P.S. Shiverinarayan, Distt. Janjgir-Champa (C.G.)

VS

RESPONDENT The State of Chhattisgarh Through P.S. Shiverinaryan.

Present:
Mr. G.S. Ahluwalia, Advocate for the appellant.
Mr. Sudhir Bajpai, Dy. Government Advocate for the respondent/State.

ORAL JUDGMENT
(13th July, 2007)

Per L.C.Bhadoo, J:

This appeal is directed against the judgment of conviction and order of sentence dated 26th July, 2002 passed by the 2nd Additional Sessions Judge, (FTC), Janjgir in S.T. No.230/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of his mother Sukhwara Bai, sentenced him to undergo R.I. for life. However, no fine amount has been imposed considering the poverty of the accused/appellant.

Case of the prosecution, in brief, is that Geeta Bai, wife of accused Rajkumar, was not well since last 1½ months and even after providing the

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treatment she was not recovering. Accused Rajkumar was doubting that his mother Sukhwara Bai (since deceased) is practicing witchcraft on his wife. In the morning of fateful day the accused was working along with his wife in their agricultural field (खाल्हे माठा खेत), after some time his mother Sukwara Bai and father Fattelal (PW-1) came in the agricultural field. Rajkumar asked his father to go and repair the boundary mound (मेड़), therefore, his father went towards that side and thereafter accused started quarrelling with Sukwara Bai and attacked her with sickle. Fattelal saw the accused attacking Sukwara Bai and therefore, he raised the cries "save-save". In the meantime, the persons who were working in the adjoining field, namely Puniram (PW-2), Jawahar Lal Sahu (PW-4) & son-in-law of Jeetram Kashyap came there and saw that Sukhwara Bai was lying on the ground, there were injuries on her stomach, back & fingers of right hand and blood was oozing out of the injuries. Fattelal took Sukhwara Bai for treatment to his house. The matter was reported under Ex.P-1 in the Police Station Shivrinarayan.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate 1st Class, Janjgir, who in turn committed the case to learned Sessions Judge, Bilaspur from where the Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined 16 witnesses. Statement of accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and

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stated that he is innocent and has been falsely implicated in the crime on account of enmity.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant, as aforementioned.

We have heard Mr. Ahluwalia, Advocate for the appellant and Mr. Sudhir Bajpayee, Dy. Govt. Advocate for the respondent/State.

At the outset Mr. Ahluwalia, learned counsel for the accused/appellant has neither challenged the finding of the trial court regarding homicidal death of Sukwara Bai nor the involvement of the accused/appellant in the crime in question. He simply argued that as the wife of the accused was not well since last 1½ months, the accused was doubting that his mother is practicing witch craft on his wife on account of which his wife is ill and therefore, on the fateful day some altercation took place between the two and without any pre-meditation or preparation all of sudden in a heat of passion accused attacked his mother, who sustained the injuries and died on account of that. There was no intention of the accused to cause death of his mother and therefore, the offence against the accused/appellant does not travel beyond Section 304-II of the IPC.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

So far as the involvement of the accused/appellant in crime in question is concerned, Fattelal (PW-1), father of accused, has categorically stated that

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his daughter-in-law was ill since last 1½ months and even after providing treatment she was not recovering. Accused was doubting that Sukhwara Bai i.e. his mother, is practicing witch craft on his wife. On the fateful day accused and his wife were in खाल्हे भांठा field, after some time he along with Sukwara Bai also reached there. When they reached agricultural field, the accused asked him to repair the boundary mound. He saw that accused started quarrelling with Sukhwara Bai and thereafter he attacked her. She was crying to save her. He saw that Sukhwara Bai received injuries on her chest, stomach, back and fingers of her right hand. In para 4 again he has stated that accused was doubting that Sukhwara Bai is a witchcraft. Puniram (PW-2) has also corroborated the above evidence. PW-4 Jawahar Lal Sahu, PW-5 Manohar, who were working in the adjoining field have also corroborated the prosecution case in material particulars.

Therefore, the finding of the trial court regarding involvement of the accused/appellant in attacking his mother is based on the legal evidence and to that extent we do not find any illegality or irregularity in the finding of the trial court.

As far as the question of nature of offence committed by the accused/appellant is concerned, from the evidence of Fattelal (PW-1) father of the accused & husband of deceased, it is established that wife of the accused was ill, she was not recovering even after providing

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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treatment, therefore, the accused was disturbed and he was doubting that his mother is practicing witchcraft. On the fateful day when he himself, his father, mother and wife were present in the agricultural field all of a sudden some altercation took place between Sukhwara Bai & the accused and without any pre-meditation or preparation all of a sudden the accused attacked his mother with sickle. There is nothing on the record to show that the accused attacked the deceased with an intention to cause her death. Therefore, the arguments advanced by learned counsel for the accused/appellant has substance and based on the above evidence we are of the considered opinion that the offence against the accused does not travel beyond Section 304-II of the IPC.

In the result, the appeal filed by accused/appellant partly succeeds. Conviction of the appellant under Section 302 of the IPC and sentence imposed upon him under that section are hereby set aside and he is acquitted of that charge. Instead thereof, he is convicted under Section 304 -II of the IPC and sentenced to undergo R.I. for 8 years. It is stated that the accused/appellant is in detention since 18.4.2000 till today, therefore, he shall be entitled for set-off of the above detention period against the sentence imposed upon him.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-